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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

GRACE HAYS et al.,

Plaintiffs and Appellants,

v.

MICHAEL RANSBURY et al.,

Defendants and Respondents.

D050761

(Super. Ct. No. GIC841800)

APPEAL from a judgment of the Superior Court of San Diego County, Ronald L. Styn, Judge. Affirmed.

Plaintiffs Grace and Gregory Hays (Plaintiffs) purchased a house from defendants Michael and Teri Ransbury (together the Ransburys). Before closing escrow on the house, Plaintiffs hired defendant Michael Tierney to conduct a home inspection, and Tierney provided Plaintiffs with a report of his findings. Plaintiffs later filed this action against the Ransburys and Tierney, asserting there were numerous defects in the house and seeking monetary damages under a variety of theories. The court's judgment was in favor of the Ransburys and Tierney, and Plaintiffs appeal.

Although Plaintiffs' opening brief lists 16 issues on appeal, one of which is subdivided into eight separate claims, we are unable to review most of the claims because of the absence of an adequate record. Moreover, Plaintiffs' brief does not comply with the rudiments of appellate requirements that would, even with an adequate record, require us to deem many of the claims waived. Accordingly, we are constrained to evaluate this appeal only as to those few issues properly preserved and adequately briefed.¹

BACKGROUND

In August 2004 Plaintiffs commenced this action against the Ransburys and Tierney, among others. Plaintiffs' first amended complaint alleged that, in 2001, the Ransburys had begun building a home in Fallbrook, California (the home), and two years later offered the home for sale. Plaintiffs entered into a contract to buy the home, and before escrow closed, hired Tierney to conduct a home inspection. However, Plaintiffs alleged neither the Ransburys nor Tierney disclosed to Plaintiffs that there were defects in the construction and/or that numerous representations in the real estate transfer disclosure statement were false. Escrow closed in mid-October 2003.

The initial trial commenced in June 2006, but resulted in a mistrial. When proceedings resumed, the parties agreed to waive jury trial and have the matter tried to the court, and stipulated the court could consider the testimony given in the initial trial as though it had been given in the bench trial. Importantly, despite the court's express

¹ The Ransburys and Tierney have moved to dismiss the appeal. Because of our disposition, the motions to dismiss are denied.

warning of potential appellate problems, the parties also agreed to waive any court reporter for the bench trial.

In the new proceedings, which stretched over 12 court days, at least 14 witnesses testified. The court ultimately issued a written statement of decision, rejecting each of Plaintiffs' claims, and holding in the Ransburys' favor.² On Plaintiffs' claims for breach of implied warranty or breach of contract, the court specifically found any alleged problems with the house did not give rise to claims for breach of implied warranty or breach of contract because there was insufficient evidence the Ransburys were in the business of building and selling homes. (*Siders v. Schloo* (1987) 188 Cal.App.3d 1217, 1220-1222 [breach of implied warranty/contract claims cannot be maintained against an owner who builds his or her own house and later sells it, but is not in business of building and selling homes].) On Plaintiffs' fraud claim, the court found the evidence showed the Ransburys did not intentionally misrepresent any aspect of the house. On Plaintiffs' negligent misrepresentation and negligence per se claims, which relied on the Ransburys' statements (contained in the Real Estate Transfer Disclosure Statement required by Civ. Code, § 2079 et seq.) that they were unaware of any defects in the house, the court found (1) the Ransburys were in fact unaware of the alleged defects and therefore there were no

² The court had previously granted Tierney's motion for judgment (Code Civ. Proc., § 631.8, subd. (a)) after Plaintiffs rested their case in chief. The court granted the motion for judgment in Tierney's favor because Plaintiffs did not introduce any evidence either of the standard of care applicable to home inspectors or evidence that Plaintiffs' inspection fell below the standard of care.

misrepresentations, and (2) the Ransburys did not violate any of the obligations imposed on them by Civil Code section 2079 et seq. Finally, as to Plaintiffs' claim for negligence, the court found Plaintiffs had not introduced any evidence showing the extent to which they suffered compensable injury as required by *Aas v. Superior Court* (2000) 24 Cal.4th 627, and therefore there was no evidence to support a damages award to them. Plaintiffs appeal.

STANDARDS OF REVIEW

On appeal, we presume the trial court's judgment is correct (*Denham v. Superior Court* (1970) 2 Cal.3d 557, 564), and it is the burden of the party challenging a judgment on appeal to provide an adequate record and affirmatively to show error on appeal by an adequate record. (*Ketchum v. Moses* (2001) 24 Cal.4th 1122, 1140-1141; *Ballard v. Uribe* (1986) 41 Cal.3d 564, 574-575; *Pringle v. La Chapelle* (1999) 73 Cal.App.4th 1000, 1003.) Thus, an appellant must both provide an adequate record and support the appellate arguments with appropriate citations to the material facts in the record, and the failure to do so waives the argument. (*Duarte v. Chino Community Hospital* (1999) 72 Cal.App.4th 849, 856.)

Plaintiffs have provided this court with only a clerk's transcript, but have not provided a complete reporter's transcript of the trial.³ Accordingly, this appeal is

³ Other than retention of counsel for oral argument on appeal, Plaintiffs elected to represent themselves on appeal. Self-representation "does not provide a basis for preferential consideration. A party proceeding in propria persona 'is to be treated like any other party and is entitled to the same, but no greater[,] consideration [as] other litigants

essentially an appeal on the judgment roll. (*Navarro v. Perron* (2004) 122 Cal.App.4th 797, 801.) In a judgment roll appeal, we conclusively presume the evidence is ample to sustain the trial court's findings. (*Allen v. Toten* (1985) 172 Cal.App.3d 1079, 1082-1083; *Krueger v. Bank of America* (1983) 145 Cal.App.3d 204, 207; *Ehrler v. Ehrler* (1981) 126 Cal.App.3d 147, 154.) Our review is severely constrained, and is limited to determining whether any error "appears on the record." (*Bond v. Pulsar Video Productions* (1996) 50 Cal.App.4th 918, 924.) Every presumption must be indulged in favor of the validity of the judgment, and all facts consistent with its validity will be presumed to exist (*ibid.*); the only cognizable issues in a judgment roll appeal are whether the complaint states a cause of action, whether the findings are within the pleaded issues, whether the judgment is supported by the findings, and whether reversible error appears on the face of the record. (Cal. Rules of Court, rule 8.163; *Estate of Larson* (1949) 92 Cal.App.2d 267, 268; *National Secretarial Service, Inc. v. Froehlich* (1989) 210 Cal.App.3d 510, 522.)

APPEAL OF JUDGMENT IN FAVOR OF TIERNEY

The court granted the motion for judgment in Tierney's favor because it found there was no evidence either of the standard of care applicable to home inspectors or that Tierney's inspection fell below the applicable standard of care. On this record, we must

and attorneys.' [Citation.] Indeed, ' "the in propria persona litigant is held to the same restrictive rules of procedure as an attorney." ' [Citation.]" (*First American Title Co. v. Mirzaian* (2003) 108 Cal.App.4th 956, 958, fn. 1; *Nwosu v. Uba* (2004) 122 Cal.App.4th 1229, 1246-1247.)

presume the evidence supports those findings. We are limited to examining whether those findings were within the issues framed by the pleadings, and whether the judgment is supported by the findings.

The findings involved issues at the core of the claims framed by Plaintiffs' pleading as against Tierney, because Plaintiffs alleged Tierney was liable to them for (1) negligently "fail[ing] to provide services within the standard of care for a pre-purchase home inspector" and (2) negligently "fail[ing] to provide services within the minimum requirements of" specified sections of the Business and Professions Code. Moreover, these findings also support the judgment. In negligence cases arising from the rendering of professional services, as a general rule the standard of care against which the professional's acts are measured must be shown by expert testimony (*Unigard Ins. Group v. O'Flaherty & Belgum* (1995) 38 Cal.App.4th 1229, 1239), and ordinarily there must also be evidence from experts to establish the defendant did not exercise the requisite degree of learning, care or skill to satisfy the necessary standard of care. (Cf. *Ewing v. Northridge Hospital Medical Center* (2004) 120 Cal.App.4th 1289, 1302.) The absence of evidence showing either aspect of professional negligence justified entry of judgment in Tierney's favor, and Plaintiffs make no effort to show (as they must on a judgment roll appeal) that those findings were beyond the issues framed by the pleadings or would not support the judgment.

On appeal, Plaintiffs seem to argue, without citation either to the record or to any relevant authority, the trial court abused its discretion by denying their motion (apparently made in response to Tierney's motion for judgment) to reopen their case in

chief to supply the required testimony. However, that argument is beyond the limited issues we may reach on a judgment roll appeal. Additionally, the claim is waived because Plaintiffs do not cite to the record (*Nwosu v. Uba, supra*, 122 Cal.App.4th at p. 1246), or to any pertinent authority affirmatively demonstrating the ruling was an abuse of discretion. (*Dabney v. Dabney* (2002) 104 Cal.App.4th 379, 384.) We therefore reject the argument that reversal is warranted based on the trial court's ruling denying Plaintiffs' motion to reopen their case.

APPEAL OF JUDGMENT IN FAVOR OF THE RANSBURYS

The same impediments bar Plaintiffs' multiple arguments seeking reversal of the judgment in favor of the Ransburys. The court rejected Plaintiffs' claims for breach of implied warranty or breach of contract because the evidence did not support their claim that the Ransburys built and sold this house as part of their business of building and selling homes. This finding was within the issues framed by the pleadings, and supports the judgment. (*Siders v. Schloo, supra*, 188 Cal.App.3d at pp. 1220-1222 [breach of implied warranty/contract claims cannot be maintained against owner who builds own house and later sells it, but is not in business of building and selling homes].) Plaintiffs' claim on appeal--that the evidence was to the contrary--may not be raised in a judgment roll appeal. (*Ehrler v. Ehrler, supra*, 126 Cal.App.3d at p. 154.) Similarly, on Plaintiffs' fraud claim, the court found the evidence showed the Ransburys did not make any intentional or negligent misrepresentations. These findings were within the issues framed by the pleadings, and support the judgment; Plaintiffs' claim that the evidence was to the contrary may not be raised in a judgment roll appeal. On Plaintiffs' negligence per se

claims premised on the Ransburys' statements in the Real Estate Transfer Disclosure Statement, the court found both that there were no misstatements *and* the Ransburys did not violate any of the obligations imposed on them by Civil Code section 2079 et seq. Again, these findings were within the issues framed by the pleadings, and support the judgment; Plaintiffs articulate no basis for reversing that aspect of the judgment.

Finally, as to Plaintiffs' claim for negligence, the court found Plaintiffs had not introduced any evidence showing the extent to which they suffered compensable injury, as required by *Aas v. Superior Court, supra*, 24 Cal.4th 627, and therefore there was no evidence to support a damages award to them. To recover on a negligence theory, a plaintiff must prove duty, breach, causation *and damages*. (*Leslie G. v. Perry & Associates* (1996) 43 Cal.App.4th 472, 480.) In the context of alleged defective construction, the court in *Aas v. Superior Court, supra*, held that a claim for *negligence* in constructing a house requires proof of the actual personal injury or property damages (not merely diminished economic value) resulting from the negligent acts. (*Id.* at pp. 635-647.) The court found Plaintiffs had not satisfied this burden of proof, and we must conclusively presume on a judgment roll appeal that the evidence supports that finding.

Plaintiffs appear to argue that, on appeal, we may admit new evidence under Code of Civil Procedure section 909 and, having admitted this new evidence, we may revisit all of the trial court's findings and conclusions and enter different findings. Even assuming we were to deem Plaintiffs' argument an implied motion under section 909, the power conferred "is discretionary and should be invoked sparingly, *and only to affirm the case.*" (*Golden West Baseball Co. v. City of Anaheim* (1994) 25 Cal.App.4th 11, 42 [italics

added].) Accordingly, "if the judgment can be affirmed without consideration of [Plaintiffs'] motion to take additional evidence, we need not consider it." (*Wachovia Bank v. Lifetime Industries, Inc.* (2006) 145 Cal.App.4th 1039, 1048.) Because the judgment can be affirmed without consideration of Plaintiffs' proffered evidence, and in fact the proffered evidence is solely directed at undermining the judgment, we reject Plaintiffs' request under section 909.

DISPOSITION

The judgment is affirmed. The Ransburys and Tierney are entitled to costs on appeal.

McDONALD, J.

WE CONCUR:

BENKE, Acting P. J.

HUFFMAN, J.